

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

2016 NOV -7 PM 1:00

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**  
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**MUR:**  
**DATE COMPLAINT FILED:** Apr. 15, 2016  
**DATE OF NOTIFICATION:** Apr. 26, 2016  
**DATE OF LAST RESPONSE:** June 3, 2016  
**DATE ACTIVATED:** Aug. 9, 2016  
  
**ELECTION CYCLE:** 2016  
**EARLIEST SOL:** Oct. 15, 2020  
**LATEST SOL:** Apr. 15, 2021

**COMPLAINANT:** Glen Charles Robertson

**RESPONDENTS:** Jodey Cook Arrington  
Texans for Jodey Cook Arrington and  
David Seim, in his official capacity as treasurer  
Scott Laboratories, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30114(b)  
52 U.S.C. § 30118(a)  
11 C.F.R. § 113.1(g)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

Complainant alleges that Scott Laboratories, Inc. ("Scott Laboratories"), Jodey Cook Arrington, and Texans for Jodey Cook Arrington and David Seim in his official capacity as treasurer ("the Committee") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), because Scott Laboratories paid Arrington a salary while he campaigned for a congressional seat.

Both the Committee and Scott Laboratories (collectively, "Respondents") assert that the salary is permissible compensation for *bona fide* employment under 11 C.F.R. § 113.1(g)(6)(iii), and based on information they provided, we agree.<sup>1</sup> Thus, we recommend that the Commission find no reason to believe Respondents violated the Act and close the file in this matter.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Jodey Cook Arrington is a 2016 House candidate for the 19<sup>th</sup> Congressional District of Texas, and Texans for Jodey Cook Arrington is his principal campaign committee. Arrington filed his Statement of Candidacy and a Statement of Organization on October 5, 2015.<sup>2</sup>

At the time of his candidacy declaration, Arrington was (and still is) employed as President of Scott Laboratories, a Texas-based corporation that states it is commercializing health care innovations, including telemedicine.<sup>3</sup> Arrington joined Scott Laboratories on July 3, 2014, after serving as Vice Chancellor of the Texas Tech University System.<sup>4</sup> Scott Laboratories paid Arrington the same \$220,000 annual salary that he received at his prior position with Texas Tech.<sup>5</sup>

On February 13, 2016, Arrington filed his Financial Disclosure Report with the Clerk of the U.S. House of Representatives disclosing that he received a salary of \$183,330 from Scott

<sup>1</sup> Arrington was notified of the Complaint individually, but he did not respond personally, and neither of the responses nor the designations of counsel refer to him individually.

<sup>2</sup> Statement of Candidacy, Jodey Cook Arrington (Oct. 2, 2015); Statement of Organization, Texans for Jodey Cook Arrington (Oct. 5, 2015); <http://jodeyarrington.com/arrington-announces-bid-for-congress/>.

<sup>3</sup> Scott Laboratories Resp. at 1-2 (June 1, 2016); <http://jodeyarrington.com/about-jodey>.

<sup>4</sup> Scott Laboratories Resp. at 3; Compl. at 1 (Apr. 15, 2016).

<sup>5</sup> Scott Laboratories Resp. at 3.

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1 Laboratories during the "Current Year to Filing."<sup>6</sup> A March 15, 2016, news article reported that  
2 Arrington was spending a significant amount of time travelling throughout the congressional  
3 district campaigning for the May 24, 2016, Republican runoff election.<sup>7</sup> In an April 13, 2016,  
4 radio interview, Arrington stated that his position at Scott Laboratories afforded him the  
5 flexibility to campaign while continuing to work.<sup>8</sup>

6 Based on the information in Arrington's House financial report, the news article, and  
7 Arrington's radio interview, the Complaint alleges that Scott Laboratories made, and Arrington  
8 and the Committee received, a corporate in-kind contribution in the form of salary payments.<sup>9</sup>  
9 The Complaint also alleges, without further explanation, that the salary may violate the Act's  
10 personal use restrictions because Scott Laboratories may have been unlawfully paying for  
11 Arrington's personal expenses while he was campaigning.

12 Scott Laboratories' response, which is supported by a signed declaration by its chief  
13 executive, Dr. Randy Hickle, states that in 2014, it created the position held by Arrington to  
14 grow its healthcare business through outreach to rural communities and cities outside Lubbock,  
15 Texas, its main hub.<sup>10</sup> Scott Laboratories selected Arrington based on his extensive outreach

<sup>6</sup> [http://clerk.house.gov/public\\_disc/financial-pdfs/2015/10009542.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2015/10009542.pdf). The Complaint states that the Financial Disclosure Report was filed on February 6, 2016. Compl. at 1. The report, however, shows that it was filed on February 13, 2016 and covered the period of January 1, 2014 to November 2, 2015. Committee Resp. at 2, Attach. 1 (June 3, 2016).

<sup>7</sup> [http://www.mypainview.com/news/article\\_4f95d0cc-eaba-11e5-a129-9b7289ccb332.html](http://www.mypainview.com/news/article_4f95d0cc-eaba-11e5-a129-9b7289ccb332.html). Arrington won the runoff election and is a candidate for the November 2016 general election. [https://ballotpedia.org/Texas%27\\_19th\\_Congressional\\_District\\_election,\\_2016](https://ballotpedia.org/Texas%27_19th_Congressional_District_election,_2016).

<sup>8</sup> Compl. at 1, Attach. 1.

<sup>9</sup> Compl. at 1-2.

<sup>10</sup> Scott Laboratories Resp. at 2, and Attach. A, Decl. of Dr. Randy Hickle ¶ 10 ("Hickle Decl."). Hickle is Chairman of the Grace Health System and is responsible for the hiring, firing, and evaluation of Scott Laboratories' leadership. Hickle Decl. ¶¶ 2-4.

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1 and executive leadership experience: Vice Chancellor and Chief of Staff of Texas Tech  
2 University, Chief of Staff to the Federal Deposit Insurance Corporation, and Special Assistant  
3 to former President George W. Bush.<sup>11</sup> Scott Laboratories also states that Arrington had  
4 significant flexibility in setting his work schedule and in determining how to strengthen the  
5 company's business, but that he remained in close contact with his corporate superiors.<sup>12</sup>  
6 Scott Laboratories asserts that Arrington's outreach efforts have been very successful, he has  
7 increased the company's profile and established relationships with dozens of potential customers  
8 and investors, and the company's revenue has grown more than 20% yearly during Arrington's  
9 tenure.<sup>13</sup>

10 The Committee states that the Complaint misreads Arrington's House financial disclosure  
11 report.<sup>14</sup> The Committee states that the \$183,330 salary mentioned in the financial report  
12 represents Arrington's salary from "all of 2015 through November 2, 2015, not from January 1,  
13 2016 to February 6, 2016" and "only includes eighteen days of salary payments while Arrington  
14 was campaigning full-time."<sup>15</sup>

15 Respondents assert that the compensation is consistent with the Commission's three-part  
16 exemption for payments for *bona fide* employment found in 11 C.F.R. § 113.1(g)(6)(iii).<sup>16</sup>

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<sup>11</sup> Scott Laboratories Resp. at 2-3; Hickle Decl. ¶ 11. Arrington holds two degrees from Texas Tech and an international business certificate from the MBA program at Georgetown University's McDonough School of Business. Scott Laboratories Resp. at 3; <http://www.jodeyarrington.com/about-jodey>.

<sup>12</sup> Scott Laboratories Resp. at 3; Hickle Decl. ¶¶ 14, 15.

<sup>13</sup> Scott Laboratories Resp. at 3-4; Hickle Decl. ¶¶ 16, 18-20.

<sup>14</sup> Committee Resp. at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3-6; Scott Laboratories Resp. at 5-8.

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1           **B.       Legal Analysis**

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3           Corporations are prohibited from contributing to candidates, including directly or  
4 indirectly paying for their services, and candidates and authorized committees are prohibited  
5 from knowingly receiving or accepting such contributions.<sup>17</sup> The Act and the Commission's  
6 regulations also prohibit the conversion of campaign funds to personal use, including third party  
7 payments of a candidate's expenses, which may be deemed contributions.<sup>18</sup>

8           Payments to candidates for employment, however, are not considered contributions when  
9 three conditions are met: (A) the compensation results from *bona fide* employment that is  
10 genuinely independent of the candidacy; (B) the compensation is exclusively in consideration of  
11 services provided by the employee as part of this employment; and (C) the compensation does  
12 not exceed the amount of compensation which would be paid to any other similarly qualified  
13 person for the same work over the same period of time.<sup>19</sup>

14           Based upon the available information provided in the responses, including the Hicks  
15 declaration, it appears the compensation Scott Laboratories paid to Arrington resulted  
16 exclusively from *bona fide* employment independent of his candidacy, and that the compensation  
17 did not exceed the amount of compensation which would be paid to any other similarly qualified  
18 person for the same work over the same period of time. Particularly, the information shows that  
19 Arrington had been employed by Scott Laboratories for over fifteen months before becoming a  
20 candidate in 2015, he had significant flexibility in setting his work schedule and was working  
21 full-time while campaigning, and he was successfully performing his duties while campaigning.

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<sup>17</sup> See 52 U.S.C. §§ 30101(8)(A), 30118(a).

<sup>18</sup> See 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g)(6).

<sup>19</sup> 11 C.F.R. § 113.1(g)(6)(iii).

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1 Scott Laboratories states that Arrington has increased the company's profile and revenue.  
2 Further, Scott Laboratories asserts that Arrington's compensation was solely related to the work  
3 he provided and that Arrington's salary was commensurate with his experience, and we have no  
4 information to the contrary. Finally, Scott Laboratories states that it paid Arrington the same  
5 salary as his previous employer for similar work, and neither the Complaint nor publicly  
6 available information refutes Scott Laboratories' statements.

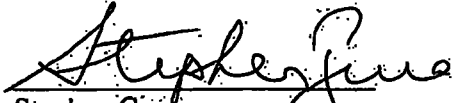
7 Given these facts, Arrington's compensation appears to satisfy the criteria set forth in  
8 11 C.F.R. § 113.1(g)(6)(iii) and is not a contribution. Given that the salary from Scott  
9 Laboratories is not a contribution, it also does not constitute campaign funds that could result in  
10 a violation of the personal use restrictions. Accordingly, we recommend that the Commission  
11 find no reason to believe that Arrington, the Committee, or Scott Laboratories violated  
12 52 U.S.C. §§ 30114(b), 30118(a), or 11 C.F.R. § 113.1(g)(6).<sup>20</sup>

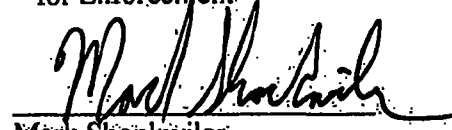
13 **IV. RECOMMENDATIONS**

- 14 1. Find no reason to believe Jodey Cook Arrington violated 52 U.S.C. §§ 30114(b),  
15 30118(a), or 11 C.F.R. § 113.1(g)(6).  
16  
17 2. Find no reason to believe Texans for Jodey Cook Arrington and David Seim in his  
18 official capacity as treasurer violated 52 U.S.C. § 30118(a).  
19  
20 3. Find no reason to believe Scott Laboratories, Inc. violated 52 U.S.C. § 30118(a).  
21  
22 4. Approve the attached Factual and Legal Analysis.  
23  
24 5. Approve the appropriate letters.  
25  
26 6. Close the file.

<sup>20</sup> See, e.g., MUR 6853 (Wamp for Congress), Factual and Legal Analysis at 3, 6; MUR 6855 (Justin Amish, *et al.*), Factual and Legal Analysis at 4-6.

11.7.16  
Date

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Kamau Philbert  
Attorney

Attachment: Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Jodey Cook Arrington  
Texans for Jodey Cook Arrington and  
David Seim, in his official capacity as treasurer  
Scott Laboratories, Inc.

MUR: 7044

**I. INTRODUCTION**

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On February 13, 2016, Arrington filed his Financial Disclosure Report with the Clerk of the U.S. House of Representatives disclosing that he received a salary of \$183,330 from Scott Laboratories during the "Current Year to Filing."<sup>5</sup> A March 15, 2016, news article reported that Arrington was spending a significant amount of time travelling throughout the congressional district campaigning for the May 24, 2016, Republican runoff election.<sup>6</sup> In an April 13, 2016, radio interview, Arrington stated that his position at Scott Laboratories afforded him the flexibility to campaign while continuing to work.<sup>7</sup>

Based on the information in Arrington's House financial report, the news article, and Arrington's radio interview, the Complaint alleges that Scott Laboratories made, and Arrington

<sup>2</sup> Scott Laboratories Resp. at 1-2 (June 1, 2016); <http://jodeyarrington.com/about-jodey>.

<sup>3</sup> Scott Laboratories Resp. at 3; Compl. at 1 (Apr. 15, 2016).

<sup>4</sup> Scott Laboratories Resp. at 3.

<sup>5</sup> [http://clerk.house.gov/public\\_disc/financial-pdfs/2015/10009542.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2015/10009542.pdf). The Complaint states that the Financial Disclosure Report was filed on February 6, 2016. Compl. at 1. The report, however, shows that it was filed on February 13, 2016 and covered the period of January 1, 2014 to November 2, 2015. Committee Resp. at 2, Attach. 1 (June 3, 2016).

<sup>6</sup> [http://www.myplainview.com/news/article\\_4f95d0cc-eaba-11e5-a129-9b7289ccb332.html](http://www.myplainview.com/news/article_4f95d0cc-eaba-11e5-a129-9b7289ccb332.html). Arrington won the runoff election and is a candidate for the November 2016 general election. [https://ballotpedia.org/Texas%27\\_19th\\_Congressional\\_District\\_election,\\_2016](https://ballotpedia.org/Texas%27_19th_Congressional_District_election,_2016).

<sup>7</sup> Compl. at 1, Attach. 1.

and the Committee received, a corporate in-kind contribution in the form of salary payments.<sup>8</sup>

The Complaint also alleges, without further explanation, that the salary may violate the Act's personal use restrictions because Scott Laboratories may have been unlawfully paying for Arrington's personal expenses while he was campaigning.

Scott Laboratories' response, which is supported by a signed declaration by its chief executive, Dr. Randy Hickle, states that in 2014, it created the position held by Arrington to grow its healthcare business through outreach to rural communities and cities outside Lubbock, Texas, its main hub.<sup>9</sup> Scott Laboratories selected Arrington based on his extensive outreach and executive leadership experience: Vice Chancellor and Chief of Staff of Texas Tech University, Chief of Staff to the Federal Deposit Insurance Corporation, and Special Assistant to former President George W. Bush.<sup>10</sup> Scott Laboratories also states that Arrington had significant flexibility in setting his work schedule and in determining how to strengthen the company's business, but that he remained in close contact with his corporate superiors.<sup>11</sup> Scott Laboratories asserts that Arrington's outreach efforts have been very successful, he has increased the company's profile and established relationships with dozens of potential customers and

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<sup>8</sup> Compl. at 1-2.

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<sup>11</sup> Scott Laboratories Resp. at 3; Hickle Decl. ¶¶ 14, 15.

## B. Legal Analysis

Payments to candidates for employment, however, are not considered contributions when three conditions are met: (A) the compensation results from *bona fide* employment that is genuinely independent of the candidacy; (B) the compensation is exclusively in consideration of

<sup>17</sup> See 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g)(6).

services provided by the employee as part of this employment; and (C) the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.<sup>18</sup>

Based upon the available information provided in the responses, including the Hicks declaration, it appears the compensation Scott Laboratories paid to Arrington resulted exclusively from *bona fide* employment independent of his candidacy, and that the compensation did not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time. Particularly, the information shows that Arrington had been employed by Scott Laboratories for over fifteen months before becoming a candidate in 2015, he had significant flexibility in setting his work schedule and was working full-time while campaigning, and he was successfully performing his duties while campaigning. Scott Laboratories states that Arrington has increased the company's profile and revenue. Further, Scott Laboratories asserts that Arrington's compensation was solely related to the work he provided and that Arrington's salary was commensurate with his experience, and we have no information to the contrary. Finally, Scott Laboratories states that it paid Arrington the same salary as his previous employer for similar work, and neither the Complaint nor publicly available information refutes Scott Laboratories' statements.

Given these facts, Arrington's compensation appears to satisfy the criteria set forth in 11 C.F.R. § 113.1(g)(6)(iii) and is not a contribution. Given that the salary from Scott Laboratories is not a contribution, it also does not constitute campaign funds that could result in

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<sup>18</sup> 11 C.F.R. § 113.1(g)(6)(iii).

<sup>19</sup> See, e.g., MUR 6853 (Wamp for Congress), Factual and Legal Analysis at 3, 6; MUR 6855 (Justin Amish, *et al.*), Factual and Legal Analysis at 4-6.